

**BEFORE THE APPEALS BOARD  
FOR THE  
KANSAS DIVISION OF WORKERS COMPENSATION**

<b>LAURA D. MERRITT</b>	)	
Claimant	)	
VS.	)	
	)	Docket No. 192,887
<b>THE BOEING COMPANY - WICHITA</b>	)	
Respondent	)	
AND	)	
	)	
<b>AETNA CASUALTY &amp; SURETY</b>	)	
Insurance Carrier	)	
AND	)	
	)	
<b>WORKERS COMPENSATION FUND</b>	)	

**ORDER**

Respondent and its insurance carrier requested review of the Award dated November 9, 1995, entered by Administrative Law Judge Nelsonna Potts Barnes. The Appeals Board heard oral argument on March 13, 1996.

**APPEARANCES**

Dale V. Slape of Wichita, Kansas, appeared for the claimant. Vaughn Burkholder of Wichita, Kansas, appeared for the respondent and its insurance carrier. Edward D. Heath, Jr., of Wichita, Kansas, appeared for the Workers Compensation Fund.

**RECORD AND STIPULATIONS**

The record considered by the Appeals Board and the parties' stipulations are listed in the Award.

### ISSUES

The Administrative Law Judge awarded claimant permanent partial disability benefits for a 59.75 percent work disability. Respondent and its insurance carrier asked the Appeals Board to review the nature and extent of claimant's injury and disability. They contend claimant's benefits should be limited to those for a scheduled injury involving only the right upper extremity. Nature and extent of disability is the sole issue before the Appeals Board on this review.

### FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Award entered by the Administrative Law Judge should be modified to reflect that claimant is entitled to receive permanent partial disability benefits for a 4 percent functional impairment to the right upper extremity.

Claimant worked for the respondent from March 1989 through July 17, 1992. Respondent initially placed claimant in major assembly which required claimant to drill parts and buck rivets. While performing that job, claimant began to experience symptomatology in both hands. Respondent then placed claimant in light sub-assembly where she worked with small parts but was required to repetitively flatten rivets. At that point the symptoms in claimant's hands drastically worsened. Claimant believes that happened in 1990. Claimant reported her symptoms to her supervisor and consulted respondent's medical department which temporarily provided claimant with wrist braces.

Respondent then placed claimant in a different job where she worked on beams. Although that job also required claimant to shoot and buck rivets, she was not required to do as many. Claimant worked at that lighter job for approximately one and one-half years and in May 1992 returned to the job which required heavy bucking and working with titanium parts. Once claimant returned to that harder job, her symptoms increased in both hands.

Claimant testified that because of the increased problems, she returned to respondent's medical department in July 1992 and was provided splints for both hands. When claimant's right hand did not improve, the medical department provided claimant with a cast-like brace and eventually referred her to Dr. James L. Gluck for treatment.

Claimant testified that she told Dr. Gluck that she was experiencing pain and swelling in both hands but the doctor responded that he could only treat her right hand because respondent had referred her for right hand treatment only. Although she has not worked for the respondent since July 1992 and despite the medical treatment provided, claimant testified that she continues to experience pain in her hands and arms on a daily basis.

Based upon the above evidence, coupled with the testimony from claimant's expert medical witness, Ernest R. Schlachter, M.D., who diagnosed claimant with overuse syndrome of both upper extremities with mild bilateral carpal tunnel syndrome and de Quervain's disease on the right, claimant contends she has sustained injury to both upper extremities and is, therefore, entitled to receive benefits for an "unscheduled" injury pursuant to K.S.A. 1992 Supp. 44-510e. On the other hand, respondent and its insurance carrier

contend claimant's injury is limited to the right upper extremity and, therefore, claimant's benefits should be governed by K.S.A. 1992 Supp. 44-510d.

Respondent relies in part upon the medical records and testimony of both Dr. Gluck who treated claimant on numerous occasions from October 1992 through February 1993, and Kenneth D. Zimmerman, M.D., who works for the respondent in its medical department. Dr. Zimmerman testified that he believes claimant's left upper extremity symptomatology completely resolved as of the date of claimant's last visit to the medical department in August 1992. According to Dr. Zimmerman, claimant had absolutely no findings or symptoms involving the left upper extremity at her last evaluation in respondent's medical department. He agreed with Dr. Gluck's assessment of permanent partial functional impairment to the right upper extremity.

Dr. Gluck testified that during the months he treated claimant she did not complain to him of left upper extremity symptoms. He believes claimant had cumulative trauma disorder in the right upper extremity which resolved and tendinitis in the right wrist which improved during treatment. Based upon the persistent tendinitis, Dr. Gluck believes claimant has sustained a 2 percent functional impairment to the right upper extremity.

Based upon the testimony of Dr. Gluck and Dr. Zimmerman, the Appeals Board finds that it is more probably true than not that claimant did not sustain permanent injury to her left upper extremity as a result of her working for the respondent. Even Dr. Schlachter, who examined claimant at her attorney's request, failed to discover any objective findings during the clinical examination of the left arm which would support a finding of permanent impairment or injury.

The burden of proof is upon the claimant to establish the right to an award of compensation by proving all the various conditions on which the right to recovery depends. This must be established by a preponderance of the credible evidence. Box v. Cessna Aircraft Co., 236 Kan. 237, 689 P.2d 871 (1984).

K.S.A. 44-508(g), as amended, defines burden of proof as follows:

"'Burden of proof' means the burden of a party to persuade the trier of facts by a preponderance of the credible evidence that such party's position on an issue is more probably true than not true on the basis of the whole record."

The Appeals Board finds that claimant is entitled to receive permanent partial disability benefits for a 4 percent permanent partial functional impairment to the right upper extremity. That percentage is derived by averaging Dr. Gluck's 2 percent functional impairment rating with Dr. Schlachter's 5 percent rating to the right upper extremity and rounding to the nearest hundredth.

The Appeals Board adopts the Administrative Law Judge's findings and conclusions to the extent they are not inconsistent with the above.

### **AWARD**

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that the Award dated November 9, 1995, entered by Administrative Law Judge Nelsonna Potts Barnes should be, and hereby is, modified as follows:

**WHEREFORE, AN AWARD OF COMPENSATION IS HEREBY MADE IN ACCORDANCE WITH THE ABOVE FINDINGS IN FAVOR** of the claimant, Laura D. Merritt, and against the respondent, The Boeing Company - Wichita, and its insurance carrier, Aetna Casualty & Surety, for an accidental injury which occurred July 17, 1992, and based upon an average weekly wage of \$815.09 for 82.57 weeks of temporary total disability compensation, including that paid during vocational rehabilitation, at the rate of \$299 per week or \$24,688.43, followed by 6.14 weeks of permanent partial disability benefits at the rate of \$299 per week or \$1,835.86 for a 4% functional impairment to the right upper extremity, making a total award of \$26,524.29, which is all due and owing and ordered paid in one lump sum less amounts previously paid.

Pursuant to stipulation, the Appeals Board assesses 50% of the above award and administrative costs to the respondent and its insurance carrier and 50% to the Workers Compensation Fund.

The Appeals Board hereby adopts the remaining orders set forth in the Award to the extent they are not inconsistent with the above.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of December 1996.

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BOARD MEMBER

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BOARD MEMBER

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BOARD MEMBER

c: Dale V. Slape, Wichita, KS  
Vaughn Burkholder, Wichita, KS  
Edward D. Heath, Jr., Wichita, KS  
Nelsonna Potts Barnes, Administrative Law Judge  
Philip S. Harness, Director